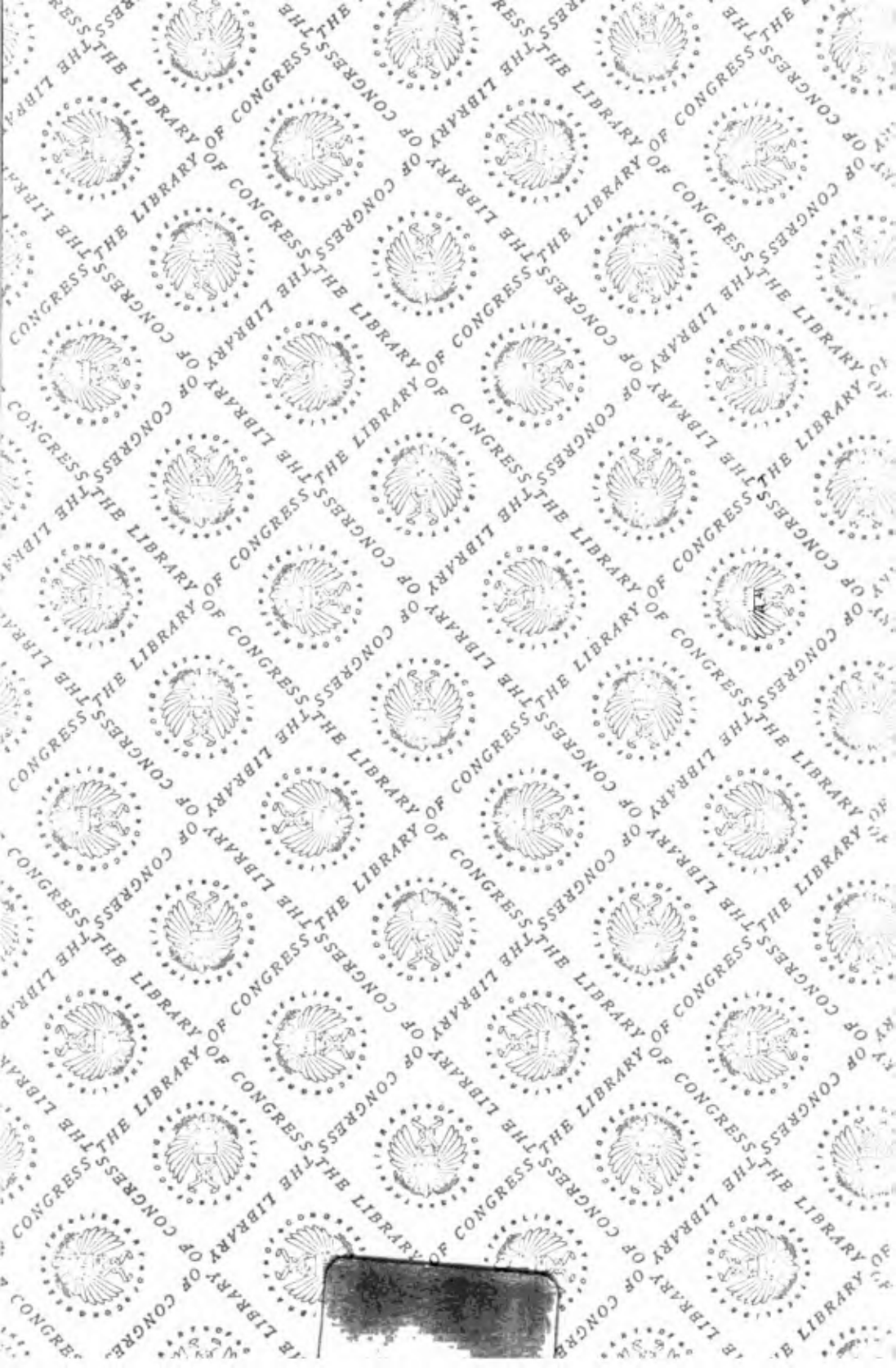
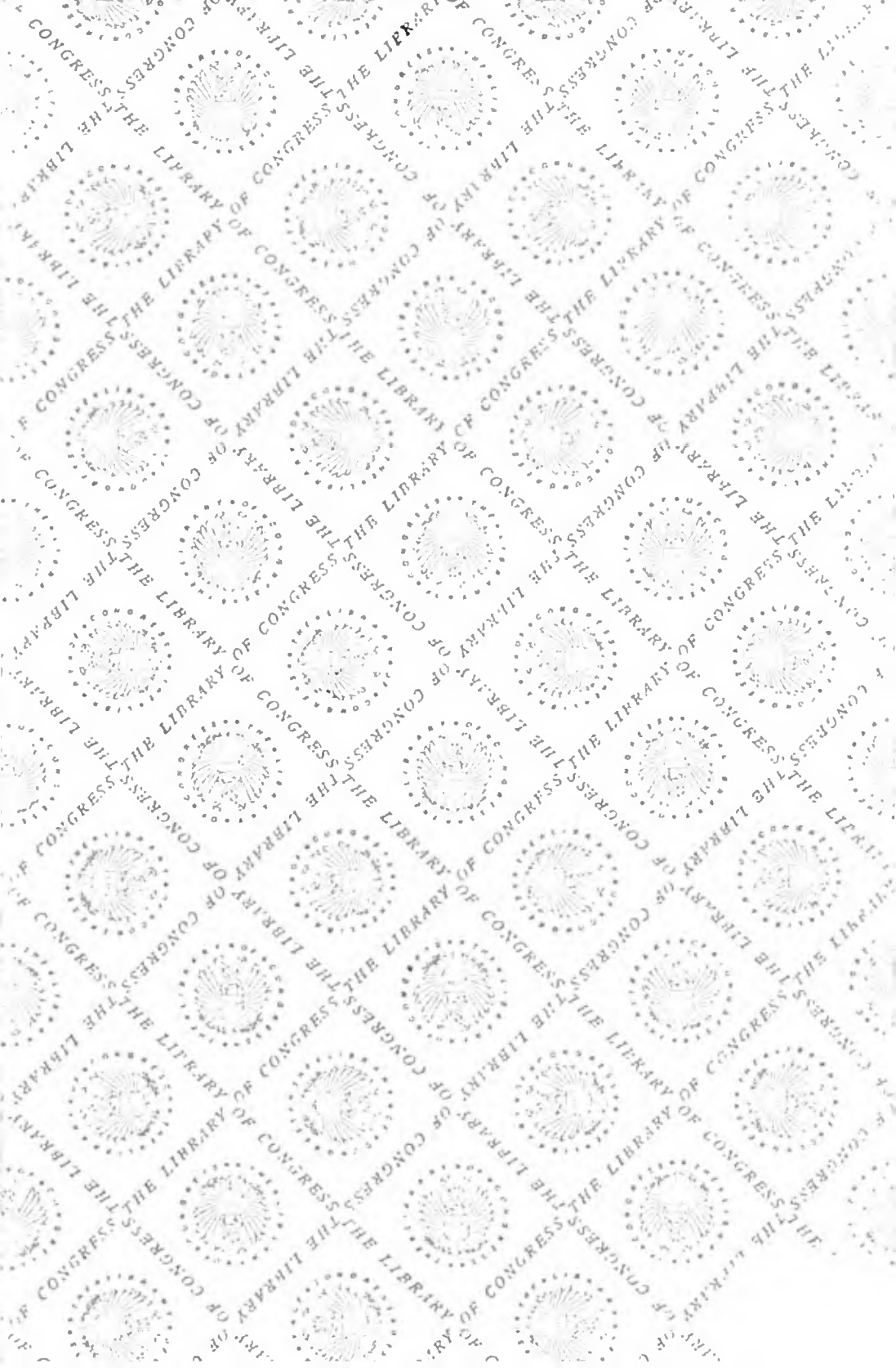


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AUTHORIZATION FOR OFFICE OF RAIL PUBLIC COUNSEL

*United States Congress. House. Committee
on Interstate and Foreign
Commerce. Subcommittee on
Transportation and Commerce.*

HEARING

BEFORE THE

SUBCOMMITTEE ON

TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

AMENDING THE INTERSTATE COMMERCE ACT TO AUTHORIZE
APPROPRIATIONS FOR THE OFFICE OF RAIL PUBLIC COUNSEL
FOR FISCAL YEAR 1979

APRIL 4, 1978

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AUTHORIZATION FOR OFFICE OF RAIL PUBLIC COUNSEL

TUESDAY, APRIL 4, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 11:40 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. These hearings are for the purpose of amending the Interstate Commerce Act to authorize appropriations for the Office of Rail Public Counsel for fiscal year 1979. A bill for this purpose has not been introduced, but it is my expectation that a bill will be submitted by the administration within the next 2 weeks, which I intend to introduce. Also, it is conceivable that a separate bill will be introduced as the result of the information received during these hearings.

At this time I will insert my full statement.

[Mr. Rooney's prepared statement follows:]

OPENING STATEMENT OF FRED B. ROONEY, CHAIRMAN OFFICE OF RAIL PUBLIC COUNSEL AUTHORIZATION HEARINGS

These hearings are for the purpose of amending the Interstate Commerce Act to authorize appropriations for the Office of Rail Public Counsel for fiscal year 1979. A bill for this purpose has not been introduced, but it is my expectation that a bill will be submitted by the Administration within the next two weeks, which I intend to introduce. Also, it is conceivable that a separate bill will be introduced as the result of the information received during these hearings.

To recall the history of the organization, it is remembered that this office was originally established by Congress in the Regional Rail Reorganization Act of 1973. The purpose of the organization was to assure that all communities and users of rail services, regardless of their size or location, were adequately represented during the reorganization process of the bankrupt railroads in the Northeast.

At that time, it was known that there would be considerable branch line abandonments and representation by the communities was needed in order to assure that there would not be adverse impacts on the shippers and/or communities unknown to the reorganizing parties.

Because of the success of this organization, Congress decided that it should be continued. The organization was believed necessary in order to insure that the public was represented in the decisions made affecting railroads as a result of the Railroad Revitalization and Regulatory Reform Act and other legislation. The Office of Rail Public Counsel, therefore, was established as an independent office by the 4-R Act of 1976.

The 4-R Act provided \$2 million for the operation of the Office of Rail Public Counsel for fiscal year 1977. These funds were not expended because a director was not appointed during that time. A director, Mr. Heffron, has now been appointed, and Congress recently authorized \$800,000 for the operation of the Office for fiscal year 1978.

As I stated, the primary purpose of these hearings is to determine the amount of funds that should be authorized for the operation of the Office for fiscal year 1979. The President's budget again provides for \$800,000, whereas the Office of Rail Public Counsel has requested \$2.4 million. I understand that this amount was submitted to the Office of Management and Budget but to date, the OMB has not approved any amount. I am informed, however, that a bill containing the Office of Management and Budget recommendations will be submitted to Congress in two or three weeks.

I do not have preconceived ideas as to what would be an adequate level of funding for fiscal year 1979. I do believe, however, that the funding should be sufficient for the Office to conduct its activities in a proper manner at a level commensurate with the needs of the shippers and communities it is designed to serve. This committee has strived for a long time for the establishment of this Office, and I for one, have every desire to see to it that it be given every chance for success.

Our witness today will be Mr. Howard A. Heffron, Director, Office of Rail Public Counsel, Washington, D.C. You may proceed, Mr. Heffron.

STATEMENT OF HOWARD A. HEFFRON, DIRECTOR, OFFICE OF RAIL PUBLIC COUNSEL

Mr. HEFFRON. Mr. Chairman, I have submitted a statement to the committee on the subject of the Office of Rail Public Counsel's authorization request for fiscal year 1979 and some brief comments on bills pending before the Congress dealing with restructuring of Amtrak routes.

With your permission, I would like to submit the statement into the record and briefly summarize it for you.

Mr. ROONEY. Without objection, it will be inserted in the record.

Mr. HEFFRON. I am very pleased to be here today, Mr. Chairman. This is my first appearance before this committee as the first Director of the Office of Rail Public Counsel. As you know, the Office of Rail Public Counsel was created by the 4-R Act, the Rail Revitalization and Regulatory Reform Act of 1976. And, I was appointed by the President at the end of last year, so that I have been in office slightly more than 3 months, as I come here today.

The Office of Rail Public Counsel is a unique Federal agency of the Government, I believe. It is an independent agency, and it has a unique statutory mission, and that is to represent the public interest in safe, efficient, economical and reliable rail transportation. That is a general statement of mission.

As the statute sets out, the agency is also to present the views of the communities and users of rail transportation services in ICC proceedings, to the extent that those views would not otherwise be adequately represented.

The agency also has specific statutory standing to intervene in Interstate Commerce Commission proceedings, as well as to seek judicial review of any Interstate Commerce Commission decision.

So, we have basically a new independent agency with authority to represent the public interest before various Federal administrative agencies and under certain circumstances, the courts.

Mr. ROONEY. Will you yield for a question?

Mr. HEFFRON. Yes, sir.

Mr. ROONEY. When we had all the abandonments proposed in conjunction with the passage of the 4-R Act, didn't we have Rail Public Counsel coming to the various districts along the Northeast corridor?

Mr. HEFFRON. Under the 3-R Act, the Interstate Commerce Commission in effect was directed to supply attorneys to assist in the presentation of views at certain public hearings which were held in connection with the reorganization in the Northeast. And, pursuant to that mandate, the Rail Services Planning Office created a section of public counsel, which participated in the Northeast Reorganization hearings.

That was a group organized within the Interstate Commerce Commission and since it was not an independent agency it had a limited role with respect to these Northeast hearings.

Mr. ROONEY. But basically your office will carry on their directives?

Mr. HEFFRON. Yes; basically my office will carry on that function, plus of course the additional functions which are set out in the statute. The function formerly conducted by the Public Counsel Section has now been enlarged in that it goes far beyond the Northeast reorganization, it is now a national jurisdiction.

And, of course, the statute also adds on a great many functions that the old office did not have. For example, the new office has the right by statute to seek judicial review of an ICC decision, the old office could not do that. The new office has the right to intervene in Interstate Commerce Commission proceedings. The old office could not do that.

The hearings in which the old office participated were public meeting-type hearings, they were not formal proceedings conducted under the Administrative Procedure Act.

So, it is a different frame of reference, although the functions performed by the old office will, of course, be included in the scope of the new office. And the plans which we have set out in our organizational request will include continuing those functions and building on them, essentially.

The basic purpose of the Office of Rail Public Counsel, if I can capsulize it, is to assist the ICC in making sure that the record of the proceedings before the ICC contains all of the relevant considerations which ought to go into a good decision.

Many of the ICC's proceedings are modeled on the judicial mold. The Commission passively waits for the parties before it to offer evidence. Those parties are private parties. They have their own interests to protect. And, they present evidence and argumentation and expert testimony.

Mr. SKUBITZ. That is not quite correct.

Mr. HEFFRON. I am sorry, sir?

Mr. SKUBITZ. That is not quite correct.

Mr. HEFFRON. I am sorry, sir?

Mr. SKUBITZ. That is not quite correct. In abandonment hearing you have had hearings which are held all up and down the line. Meetings are held and cities are permitted to come forth and testify, individuals are permitted to come in and testify, isn't that correct?

Mr. HEFFRON. Yes, sir, they may do so, but basically the structure of the hearings is if the party does not come there to present those views, those views will not be present on the record.

Mr. SKUBITZ. Well, then is your job to go out and promote views, is that what you are telling us?

Mr. HEFFRON. No; I would not say the job is to promote views. I would say the job is to make sure that views which are held with

respect to highly technical and complicated subject matters are capable of being presented in a form that is understandable and able to enlarge the record, so that the decisionmakers have the ability to take all of the factors into account.

But, I say that would be one of the major functions, to make sure that the record is adequate and that it contains all the relevant considerations. Again, our office will be able to take the initiative, unlike the judicial model, and in proceedings in which the office participates directly it will be able to develop such facts as may be necessary to enlarge the record.

The matters that the office has potentially within its scope are exceedingly complex and technical. I mean ICC proceedings are a mystery to a great many very able lawyers, let alone the general public. And the kinds of concepts that are involved are extremely difficult, for example, the rate-making area, which is obviously a subject of a great many ICC proceedings in which this office can participate.

You get extremely difficult questions involving economics and the collection of economic data which are intermeshed with the legal issues, the reasonableness of the rates, for example: When you talk about the merger proceedings, and now we have, of course, the largest merger in the history of American Railroads, as I understand it, now pending before the ICC, the Burlington-Frisco merger. You get matters of enormous complexity and they are not just like ordinary law suits because they involve the requirement that there be expert analysis, expert cost analysis, expert collection of economic data, because the judgments that have to be made are only going to be as sound as that basic record.

I am advised that at a hearing held in the Burlington matter just within the last 2 or 3 days, I believe, there it was estimated by the proponent railroads that they would require 3 months of hearing time to submit the evidence in support of the merger, and the protesting railroads, of which there are a great many, indicated they would need at least 3 months to submit their evidence.

Now, that does not take account, and my information does not go to, the other parties all of whom had positions to be represented. It does not go to the question of discovery which the Administrative Law Judge took under advisement. Now, that is one example of the nature of the proceedings and it would require an enormous commitment of resources for an office the size of the Office of Public Rail Counsel to jump into any single one of them.

But, there are a great many of them out there. So that we have rail rates, we have mergers, and of course, we have abandonment proceedings. And, I do not mean to indicate a priority in the order in which I refer to these matters. But, my information is that there are about 125 abandonment proceedings actually pending before the Interstate Commerce Commission.

Mr. SKUBITZ. And how many people do you have working on abandonment cases?

Mr. HEFFRON. Well, if we receive the funds we are requesting, Mr. Skubitz, we will have a total of 14 lawyers.

Mr. SKUBITZ. That is for all your work?

Mr. HEFFRON. That would be for—

Mr. SKUBITZ. I think in your testimony you point out that you have two people working on mergers. Here we have two of the biggest

mergers going on at the present time, with some of the top flight lawyers in the country, how in the world do you expect to fit into that?

Mr. HEFFRON. Well, let me say, of course we do not have, we do not have anybody working on mergers yet. The estimated statement is that a merger case could easily absorb the services of two lawyers.

Mr. SKUBITZ. Just two lawyers?

Mr. HEFFRON. Plus assistance from experts.

Mr. SKUBITZ. All right.

Mr. HEFFRON. I am troubled by that problem, because there are so many important matters out there that they could easily eat up the small staff that we have requested. I have requested what I regard as a very lean start because I am not sure that we could absorb more people.

Well, now, I just want to call it as I see it, Mr. Chairman. From what we have requested we are going to have to make a start. Now we are going to have to analyze a proceeding. Take the merger case, for example. There are going to be enormous numbers of issues, and we are going to have to identify the issue or issues that are, or seem to us, most significant and put in a presentation that may have to be limited to the one or two most important issues.

In that way, maybe we can maximize our impact in a variety of proceedings. Because I quite agree, if one jumped into one of these absolutely massive cases, it would absorb your staff for an indefinite period.

Now, the abandonment cases represent another enormous demand on the office's resources. As I indicated, there are about 125 pending right now and these are proceedings pending under the rules of the Interstate Commerce Commission. And, therefore, they are real lawsuits, they will in many cases be tried before an Administrative Law Judge.

There will be live testimony and there can be some rather hotly disputed issues of fact in these cases. Almost every State in the Union has these proceedings pending. There are also hundreds which have been listed for abandonment by the railroads in this so-called category 1.

I am told that the Milwaukee bankruptcy in the Midwest will likely result in the filings of additional abandonment applications.

There are problems in New England which could turn into or at least result in additional abandonment applications.

So, we have an enormous potential requirement in the case of the abandonment proceedings.

And, let me stop here for a moment to indicate how we would hope to deal with that particular problem which is national in scope. And that is we intend to build on the experience of the former Office of Public Counsel, and use a so-called outreach attorney program. That office had retained private attorneys, on a per diem basis, trained them and then used them to go out to the local communities and to assist the communities.

They advised them of what their rights were, explained the procedures that were being followed, described the types of data the community should be collecting if it desired to do something about the proposal. And, we would build on that experience.

I do not know how else we could do it. I think having a full-time staff of Government lawyers would just not be very cost effective and

I think we will get a better quality practioner who will have a better rapport with the communities if he is not a full time Government employee. So, we expect to build on that.

Mr. SKUBITZ. Accept a chip on a deal like that, in other words, you pay him on a per-diem basis for going out?

Mr. HEFFRON. Yes, sir.

Mr. ROONEY. I had several in my district, and they did an outstanding job. They really did, and if you are going to take that approach I think you are taking the right approach.

Mr. HEFFRON. Well, I am glad to hear that. Now, I have heard very good reports of the work that they did and I have already started to interview several of the outreach attorneys who would be interested in going forth and in building lists of lawyers who would be interested who we will be interviewing very carefully before they come on board to do this work.

The outreach attorneys also required the support of experts and consultants. You cannot just pluck a lawyer from private practice and expect him to know what sort of economic data has to be collected for a community to make any sort of showing with respect to its need for rail services or what alternatives ought to be made available to it or what sort of subsidy might be in order.

And, so, we are going to need experts to develop this type of instruction for the outreach lawyers as well as to support them with respect to particular matters as they come along. I would hope these same experts would be available to the home staff to support us in the proceedings that we will be getting into, because the permanent staff, in addition to providing support for the outreach attorneys will be participating in some major Commerce Commission proceedings as well as court litigations.

Now, I could go on listing the types of matters that the office can get into, rail safety, which is very much, of course, in the news today. The matter of derailments and the issue of deferred maintenance, we all know that the railroad industry has had a terrible time maintaining its tracks and that enormous deferrals have accumulated, meaning failures to maintain, which are represented by dollar amounts of a staggering size.

I have asked the question, I do not know the answer, but I wonder whether there is some relationship between deferred maintenance and derailments.

Mr. SKUBITZ. Sure, yes.

Mr. HEFFRON. But, we have the question of the track standards which are in effect, which have been issued by the Federal Railroad Administration. The track standards take into account the level of maintenance. The poorer the maintenance, the slower the speed.

Now, theoretically, the track standards, are compensating for the failure to maintain so that if you are running the train 10 miles an hour on a bad track there is no greater risk than running that train at 50 miles an hour on a good track. That is my understanding, but we are still getting an awful lot of derailments. It just seems to me that there ought to be a good look taken at that question.

Mr. SKUBITZ. What would you do in the case of a line like the Rock Island which is bankrupt already and with lines that are in terrible shape, would you go in and close them down or would you loan them money?

Mr. SKUBITZ. Everybody along the line says, "Hey, wait a minute, you are stopping the only track we have got."

Mr. HEFFRON. Well, you have a problem. I would say you have a clash between the need for rail services and the need to protect the public from risks of serious physical harm. I personally do not have any doubt as to which way I would go under those circumstances.

I think you have to protect the public from physical injury and harm, but I would certainly prefer to find a way to accommodate both of those requirements, so that we can have rail safety and rail services.

And, of course, we have basic simplification and improvement of regulatory procedure. I think it is not without significance that the Office of Rail Public Counsel was created as part of a Rail Revitalization and Regulatory Reform Act. I think it represents a consensus in the Congress that an agency of this sort could contribute to regulatory reform if it was outside the system for which reform seemed to be indicated.

I think as outsiders and as independent outsiders, we would take a look at the question of regulatory reform. Now, I have indicated in my statement other areas that are potentially there, rather than—I would not repeat it now, except I hope I have given some indication that these matters are very technical, they are complex, and even within the bounds of the limited budget request, I think we have made, we are going to have to select our priorities with great, great care if we are going to have any sort of an impact at all.

The request we have made of approximately \$2.4 million will provide for in-house staff lawyers, of 14 lawyers, 4 economists, financial and transportation analysts, and the balance for paralegal and support personnel. It will also cover the development of an outreach attorney program to cover these abandonment matters I have referred to which are all over the country.

But, more than that, unlike the prior Office of Public Counsel, the new statutory office need not be and will not be limited to purely abandonments. There may be other types of proceedings brought by the Interstate Commerce Commission that the office may get into which are out in the field which the outreach attorneys will at least be aware of.

They will be maintaining liaison with State Departments of Transportation and groups because my belief is that we have got to have that kind of input from out in the field to find out what is really concerning people about railroad services in their communities, in their States, in their regions.

Mr. ROONEY. You mentioned 14 attorneys in your ship. Didn't the ICC budget requested last year provide 21 attorneys?

Mr. HEFFRON. Well, there was total positions, I think of 20 or 21, which would have included support. That budget was never put into effect because no director had ever been appointed. But, I have taken those figures, however, and the planning that did go on in the old office and I have attempted to work with them in helping me gauge what we would need now.

Mr. ROONEY. How much did that outreach plan cost the RSPO?

Mr. HEFFRON. I have tried to check that out and I have one figure of \$350,000, approximately. But, apparently, the Office of Public Counsel requirements were mingled, mixed with the RSPO, and I cannot get it segregated, I cannot unscramble it at this time.

So, I think the figure I have given you is probably the figure for the payments made to the outreach attorneys for a limited period of time. I do not think it covers the impact of the outreach attorneys on the office for all of the overhead costs, the costs of supervision, the costs of supplying them with materials, documentation, instruction, and so on, and so forth.

That is the best I could do on that, Mr. Chairman. We will, in addition, as I have indicated, our budget will cover the inhouse staff, cover the outreach attorney program, and cover expert and consultant assistance to both the inhouse staff and the outreach attorney program.

Now, I might add that my budget request is not as specific as I would like it to be. I would hope that the next time I come here it will be much more specific. And, I just hope the committee recognizes that we have no track record, we are trying to develop a track record for you.

We have to start somewhere. The agency is independent, it was created by the Congress without any transfer of personnel, property or records so that I think I am probably qualified as the administration's No. 1 expert on zero-based budgeting.

So, for that reason, we do not have the kind of specific record that I would hope to present to you next time. But, I think what we have asked for, I say it is a modest request in the light of the enormous problems out there. But, I think it is one that hopefully will be able to show something of what we can do so that the next time we come back here we can have a dialog about some specific programs that we have undertaken.

May I just say a word now, Mr. Chairman, about the Amtrak route restructuring. I just wanted to limit my remarks to those provisions of the various bills which deal with the question of community involvement in the planning process. I think it is clear that any authorization of rail passenger services touches a community very closely and is a matter of tremendous significance to the people in that vicinity.

So, we think that any bill that is finally enacted on this subject ought to provide for public hearings, so that the communities will be enabled to make their positions clear and state their views. And, we would anticipate under our general statutory mandate or under specific language which could be inserted in the legislation, that we will be making our services available to assist communities and user groups in getting their views presented at these public hearings.

Obviously, depending on when the hearings are held, our ability and capability of providing assistance will vary. If they are held immediately, we are at such an early stage of development we would not be able to do very much. If they are held later on in the summer, we will be able to do more.

And, as I have indicated, the timetable in the pending legislation provides for the preliminary recommendations of the Secretary to be held over the ensuing 4-month period.

We think that it is important that the hearings not be scheduled until the latter part of that period, so that the communities will be given an opportunity to study the recommendations to absorb the impact and to make a determination as to what they want to do about it. And, if the hearings are held in that pattern, I would hope our office would have an outreach attorney program well along.

Mr. ROONEY. You have to be concerned about the constraints of the Congress, too.

Mr. HEFFRON. Yes; I understand.

Mr. ROONEY. That report was due on March 1. Now we will not have it until May 1.

Mr. HEFFRON. Well, I appreciate that, Mr. Chairman.

I am just saying from the point of assistance, we will be able to do better in the latter part. I am not suggesting any change in the timetable in the bill.

Well, I think that completes my summary of the statement.

[Mr. Heffron's prepared statement follows:]

STATEMENT OF HOWARD A. HEFFRON
DIRECTOR, OFFICE OF RAIL PUBLIC COUNSEL
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

April 4, 1978

Mr. Chairman, as you know, this is my first opportunity to appear before the Subcommittee. I am pleased to testify today on behalf of the fiscal year 1979 authorization for the Office of Rail Public Counsel, for which we are requesting the amount of \$2.4 million. I would also like to comment briefly on the pending proposals for restructuring the route system of the National Railroad Passenger Corporation.

Functions and Purposes of the Office of Rail Public Counsel

The Office was created under Section 304 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act"). I was recently appointed by President Carter, with the advice and consent of the Senate, to be the first Director of the Office and have actually occupied the Office for little more than three months.

The Office is an independent agency whose mission, in the words of the statute, is to represent before the Interstate Commerce Commission ("ICC") and other Federal agencies, and by other means to support "the public interest in safe, efficient, reliable, and economical rail transportation services." It also is empowered to solicit, evaluate, and present to the ICC the views of those communities and users of rail services whose interests would not otherwise be adequately represented in ICC proceedings. The Office is authorized to intervene in any ICC proceeding involving a common carrier by railroad, may petition the ICC to initiate such proceedings, and may seek judicial review of any Commission actions involving railroads.

The Office is the first organization created by Congressional action for these purposes. However, several times in the past the ICC has by administrative action, on a case-by-case basis, delegated to units within its own staff the role of participating as a party in particular proceedings considered to be of special significance. One recent example of such an entity, and the institutional forerunner of the new Office of Rail Public Counsel, was the public counsel section in the Rail Services Planning Office. It was set up by the ICC to assist and advise communities and users of rail services in the process of restructuring rail services in the Northeast under the Regional Rail Reorganization Act of 1973, in the wake of the Penn Central collapse and other bankruptcies.

The essential purpose of such groups -- and of the Office of Rail Public Counsel -- is to help in preparing a full record of public interest considerations, which will assist the ICC in reaching sound and well-informed decisions. Like other regulatory agencies, the ICC must decide many of its cases solely on the basis of the evidentiary record made before it. Proceedings before the ICC are frequently complex, expensive, technical, and unquestionably intimidating to the average citizen. In many cases, the only participants in these proceedings are the affected carriers and other parties with a specific and substantial economic interest at stake. The participation of an additional expert party, without such a particular economic interest but charged to promote the interests of the public at large, can help to assure that the ultimate decisions will be based on a balanced consideration of all relevant concerns, public as well as private. It is apparent from the legislative history of the 4R Act that the Congress desired a vigorous and independent agency, established by law, to provide this kind of public interest perspective in proceedings involving rail transportation.

We in the Office of Rail Public Counsel believe that, by this kind of responsible and professional participation

in agency proceedings, we can constructively contribute to the sound development of national transportation policy and the ultimate improvement of rail services for the benefit of the public. We expect that the ICC itself will welcome our participation. Chairman O'Neal has given the Office most gracious encouragement and support in these days of initial organizing.

We do not anticipate taking part in all, or even a large proportion, of the hundreds of agency proceedings involving rail transportation. Rational allocation of our necessarily limited resources will require that we act only in carefully selected matters in which our contribution is likely to have the greatest effect for the public's benefit. We will not be striving to make headlines, but rather to perform with a high degree of professional competence the kind of painstaking, detailed work upon which sound decisions may be based.

There are more than enough important matters in the rail transportation field to keep the Office fully occupied. Just to mention some of the general areas in which constructive participation by the Office might yield beneficial results demonstrates the potential scope, variety and magnitude of the issues to be considered: rail rate proposals; railroad mergers and reorganization proceedings; proposed abandonments of rail service; the patterns and adequacy of passenger service; rail safety, including track maintenance standards and enforcement; transportation of hazardous materials; proposals for improved interline and intermodal coordination; procedures for refund of overcharges and settlement of loss and damage claims; the influence of corporate structure and reorganizations on railroad operations; the regulatory accounting system and its effect on computation of the rate base and rate return; and the simplification and improvement of regulatory procedures.

Authorization Request for the Office of Rail Public Counsel

I would like to turn now to the matter of funding for the Office of Rail Public Counsel. First, let me review briefly the history of Congressional efforts to provide funds for the Office.

The 4R Act of 1976 authorized appropriations for the Office of not to exceed \$1 million through September, 1976 and not to exceed \$2 million for fiscal year 1977. The Congress appropriated \$411,000 through September 1976 and \$1,999,400 for fiscal year 1977. However, since no Director was nominated, the Office never became operational, and the funds were reprogrammed or lapsed. For the current fiscal year the Congress has authorized \$1,000,000. \$800,000 has already been appropriated and is presently available to provide for the expenses of starting the Office.

Turning now to fiscal year 1979, the President's Budget includes a request for \$800,000 for the Office of Rail Public Counsel. This request was developed by the ICC last fall, before the Office was established, and indeed before a Director was nominated. I personally did not participate in the development of this estimate. I am advised estimate was pro forma in nature and was submitted with the understanding that when a Director was appointed and had the opportunity to formulate an organizational plan for the Office, the Director would prepare a new budget request.

In evaluating the budgetary needs of the Office for the forthcoming year, I have borne in mind first, that the Office should focus its efforts on matters of major importance, and second, that professional representation requires thorough preparation, steadfast attention to detail, long hours, and dedication. I have some idea from my own experience in private practice how much time good representation

demands. A merger case, for example, may require the virtually full-time attention of at least two lawyers and an economist for substantial periods. I have also considered the experience of the former public counsel section of the Rail Services Planning Office.

Based on this review, it is my honest judgment that \$800,000 would be insufficient. An appropriation at this level would not permit us to respond adequately to requests for assistance from communities and rail users around the country faced with the proposed abandonment of rail service, or to make an effective and useful contribution in other major matters of the sort I have mentioned except, perhaps, in a few token cases.

To do this adequately and professionally will require a competent staff of sufficient size to assure effectiveness. We intend to be lean -- I am sure the Congress will make sure that we are -- but we must also be sufficient. In that connection, I have made a basic policy decision to take the time to build a staff, organization, and program of the highest possible quality, rather than assemble a staff in haphazard fashion solely for the sake of an early operational capability.

Our full-time staff will be composed primarily of lawyers and economists. In addition, the Office will need the services of experts and consultants skilled and qualified to analyze technical and financial issues, study problems of fundamental importance in national transportation policy, advise the Office, and serve as expert witnesses in cases in which the Office participates.

Moreover, we are working to develop an "outreach" attorney program which will build on the experience of the former public counsel unit of RSPO. The RSPO program sent skilled private practitioners into the field to supplement the work of the permanent staff in assuring that communities and users of rail services obtained adequate assistance and representation in certain ICC proceedings. The first task

of the outreach attorneys was to identify and contact community groups and leaders likely to be affected by or concerned with the threatened loss or diminution of rail services, potential loss of employment or tax base, or other adverse impacts of proposed rail service changes. The outreach attorneys then provided them with necessary information about the hearing process and how to participate, and, as practicable, rendered assistance in suggesting useful economic analysis of the impact or proposed changes, advised in connection with the preparation of technical exhibits, expert witnesses and other evidence for the hearings, and kept the full-time public counsel staff apprised of important developments in the field.

After careful review, we have concluded that the outreach program offers an effective and constructive means for delivering assistance at the community level, in accordance with Congressional intent, at the lowest overall cost to the government. It provides, moreover, a relationship with the government that the public tends to view as positive and helpful in nature, rather than negative or restrictive.

An example of the need for an effective outreach program is the long list of rail lines proposed or being considered for abandonment. Approximately 123 applications to abandon lines are now pending, involving about 4,600 miles. Between November 1, 1977 and February 1, 1978 the railroads filed 86 new abandonment applications with the Commission. In addition, carriers have listed hundreds of other lines as potential candidates for abandonment proceedings which could be instituted during fiscal year 1979 or earlier. The lines slated for abandonment, and the communities, shippers and consumers who will be affected, are located throughout the nation. An outreach program seems the most feasible and cost-effective means for the Office to assist local interests in these matters in accordance with the intention of the Congress.

In my judgment, an adequate Office of Rail Public Counsel will require for fiscal year 1979 a permanent staff of 29 positions, consisting of the Director, attorneys, economists and transportation analysts, and administrative, paralegal and clerical personnel; sufficient funds to obtain the necessary services of part-time consultants and experts; and an outreach attorney program large enough to supplement the work of the full-time staff in assisting communities and users of rail services not otherwise adequately represented. I have developed the amounts necessary for such an Office in accordance with the procedures prescribed by the Office of Management and Budget for personnel compensation, benefits, travel, rent, supplies and services, and other necessary program costs, and also considering the experience of our institutional predecessor, RSPO's public counsel unit, as well as my own experience as a practicing attorney and government official.

On this basis, in accordance with the statute, I have submitted a request to the Congress and to the Office of Management and Budget for authorization and appropriation of \$2.4 million for fiscal year 1979. The Office of Management and Budget has advised that it will consider this request in due course and has no objection to the submission of my request to the Congress at this time.

Restructuring of Amtrak Routes

I would now like to say a few words about the bills now pending before both Houses of Congress which could lead to a fundamental restructuring of the route system of the National Railroad Passenger Corporation ("Amtrak"). All of the bills provide in one way or another for obtaining and considering the views of communities which would be affected by such

basic changes in rail passenger service. The Office of Rail Public Counsel, whether under its existing mandate or by explicit statutory command in one of the bills under consideration, can - and I believe should - play a role in the process.

H.R. 11493 envisages a planning process which includes public hearings to be conducted by the Rail Services Planning Office ("RSPO") of the ICC on preliminary recommendations prepared by the Secretary of Transportation in accordance with statutory criteria. This bill requires that the hearings be scheduled and conducted in a manner designed to facilitate maximum participation by affected states and communities. In addition, RSPO is to invite comment on the Secretary's recommendations from Amtrak, concerned Federal and State agencies, and other interested parties. The summary and analysis by RSPO of this record is to be thoroughly considered by the Secretary in preparing the final recommended route system for transmission to Congress. H.R. 11493, on the other hand, would provide an opportunity for a community and users to provide written comments only on the Secretary's recommendations. In our opinion, it is preferable to provide public hearings on matters which so closely touch the interests of particular communities as passenger service restructuring would do.

H.R. 11493 does not explicitly provide a statutory role for the Office of Rail Public Counsel in this process, other than to require the Secretary to send the Office copies of the preliminary recommendations. However, the 4R Act empowers the Office to solicit and present to the ICC (and therefore the RSPO) the views of communities and users of rail services, not otherwise adequately represented, in any proceeding affecting their interests. Hence, under its basic legislation the Office is authorized to assist communities, to the extent practicable, in the hearings which RSPO would conduct under H.R. 11493.

S.2478, which also deals with passenger route reexamination and is now under consideration in the Senate provides specifically that to the extent practicable the Office of Rail Public Counsel shall provide the services of attorneys and other necessary personnel in order to protect the interests of those communities and users of rail passenger service which the Director determines might not otherwise be adequately represented in the course of the public hearings and evaluations to be conducted. We believe that, since the legislation before the Congress covers a specific identified rail passenger route planning process, it would be helpful if the bill also set out what the role of the Office of Rail Public Counsel in this process is to be. In this way, everyone concerned with the restructuring process - particularly the smaller communities - will know what that role is, without having to refer to other legislation. Also, the Office will then have explicit guidance from the Congress. We therefore support the language of S.2478 in this respect.

H.R. 11493 spells out a detailed schedule to cover the planning and review process for analysis of the Secretary's preliminary route recommendations. The Secretary is to publish his recommendations on or before May 1, 1978, and thereafter, during the four month period from May 1 to August 31, 1978, public hearings are to be held in different locations around the country in which states, communities and users may participate. We believe that a reasonable breathing period during which interested parties can review and analyze the Secretary's preliminary recommendations should precede the hearing process, if the participation of local community groups is to be meaningful and effective. This is particularly so in view of the fact that the initial recommendations are to include not only proposals for restructuring Amtrak's routes but also detailed operational factors, such as the quality of service to be offered on each route, frequency, speed, classes of service, as well as possibilities for intermodal coordination at connecting points.

To allow for careful study of the plan, collection of data, preparation of expert witnesses, development of all the relevant considerations applicable to particular local interests, and crystalization of public opinion, we feel that at least 60 days leadtime should be allowed before communities and users are called upon to present their views in public hearings. That would still leave time for conclusion of the hearing phase within the overall schedule contemplated in H.R. 11493.

As you know, the Office of Rail Public Counsel is now in the process of initial staffing and organization. We are moving as rapidly as possible, but our capability will necessarily be limited in the near-term future. We do not yet know the number or frequency of hearings that will be required in the field, their geographical locations or durations, or the specific issues that will be involved. All of these factors will significantly affect the demands that will be placed upon the Office's resources and the level of assistance that as a practical matter we will be able to provide.

We expect by July 1 to have initiated an outreach program capable of offering some degree of assistance to affected communities and users, if not the full measure we would hope ultimately to be capable of providing. To the extent that a reasonable leadtime is provided for study and preparation by local interests before they are called upon to present their views, as we have suggested, or if for other reasons the hearings should be scheduled later in the year, then the Office would be in a better position to offer more substantial support and assistance. Whenever the hearing process does begin, however, we wish to assure the Subcommittee that the Office of Rail Public Counsel will undertake to the extent of our capabilities to make a constructive contribution to the process.

Conclusion

To conclude, Mr. Chairman, the funding I am requesting takes into account the nation-wide scope of the mandate of the new Office of Rail Public Counsel. I sincerely urge the Congress to provide the funds I request for the fiscal year starting next October. I pledge to do my utmost to carry out the responsibilities the Congress has specifically imposed on this new Office and to do so in a manner which is responsible, thorough, and dedicated to the public interest.

PD - 1.53

Mr. ROONEY. Mr. Skubitz.

Mr. SKUBITZ. Well, I was also under the impression that the Interstate Commerce Commission itself was set up in order to protect the public interest. Was I wrong in that or not?

Mr. HEFFRON. No; I think that is quite true.

Mr. SKUBITZ. So what we are doing now is establishing another agency to overlook what we have done, to overlook the work of the Interstate Commerce Commission; isn't that right?

Mr. HEFFRON. Well, I would not say to overlook it.

Mr. SKUBITZ. To supervise it?

Mr. HEFFRON. Well, we have no supervisory power whatsoever, Mr. Skubitz. We have no regulatory power and we have no decisional power.

Mr. SKUBITZ. Don't you have the right to appeal a case? I mean if a case is taken before the Interstate Commerce Commission for abandonment or other type cases, don't you have that right?

Mr. HEFFRON. Yes; we do, Mr. Skubitz.

Mr. SKUBITZ. And if the Commission holds one way then you have the right to appeal the case?

Mr. HEFFRON. Yes; we do.

Mr. SKUBITZ. So you do have the right?

Mr. HEFFRON. Well, we do not have decisionmaking power as I indicated earlier, we plan to enlarge the record to make sure that all of the relevant considerations are before the Commission.

Now, I regard the appeal power to which you refer as very important in terms of our initial presentations to the Commission, since we will not be within the Commission. That makes our position much more credible and entitled to consideration, if we do have the right to appeal any determination.

Mr. SKUBITZ. That is right.

Mr. HEFFRON. But, it is not oversight or supervisory power.

Mr. SKUBITZ. No; but it means, if you are not satisfied with a decision you can appeal that decision. In any party, that is right—but, who picks up the chips to carry on or pays the bill for this hearing carrying on? Doesn't the Federal Government, the taxpayer take care of that?

Mr. HEFFRON. In cases where—

Mr. SKUBITZ. In cases where there is an appeal?

Mr. HEFFRON. If there is an appeal by my office that would be so, but if it were an appeal by another party, the party is responsible.

Mr. SKUBITZ. Suppose you have an abandonment hearing and you have got a lot of those, and in the view of your department the public has not been served by permitting the abandonment to go through. Then, you have the right of appeal; is that right?

Mr. HEFFRON. If we had participated in that abandonment proceeding and we have reached the conclusion you have indicated.

Mr. SKUBITZ. That is right.

Mr. HEFFRON. We could do so.

Mr. SKUBITZ. Isn't that your purpose really to prepare a case for the cities along the line, to help them out in preparing the case, and, if they do not have the funds then you are supposed to hire an attorney to appear before the Commission in their behalf, or before a hearing examiner, and if that attorney is not satisfied with the decision then he asks you to go ahead and prepare an appeal on the case. And then, the taxpayer would have to pick up the bill?

Mr. HEFFRON. Well, no, I would like to just amend what you have said in a certain respect. That is in a great many of these situations, and this is following experience of the old Office of Public Counsel, the views of the communities were presented, but the Government, while assisting the communities or the groups in presenting their views, did not formally participate as a party, and therefore did not take any legal action in that proceeding.

Their work was strictly assisting the communities in getting, developing the information that was, you know, relevant and helping them put it in an understandable form, collecting it and seeing that it got into the record.

Now, in that type of a situation, there would not be any basis of any appeal, through the use of Government funds.

Mr. SKUBITZ. You see, you are talking about getting into Government policies, into safety, mergers, abandonment cases, and Amtrak. I can just see this agency expanding and expanding and expanding until even the Commission itself will look small.

Mr. HEFFRON. Well, I can only say, Mr. Skubitz, that I do not think the budget request which was made, for openers, indicates any effort to take that big a bite.

Mr. SKUBITZ. In 35 years, I have never seen a big bite taken first, it is what happens down the road.

Mr. HEFFRON. I can only say if we ask for a bigger bite in the future, we will be asking for it on the basis of our performance and you will be able to make a judgment on that ground.

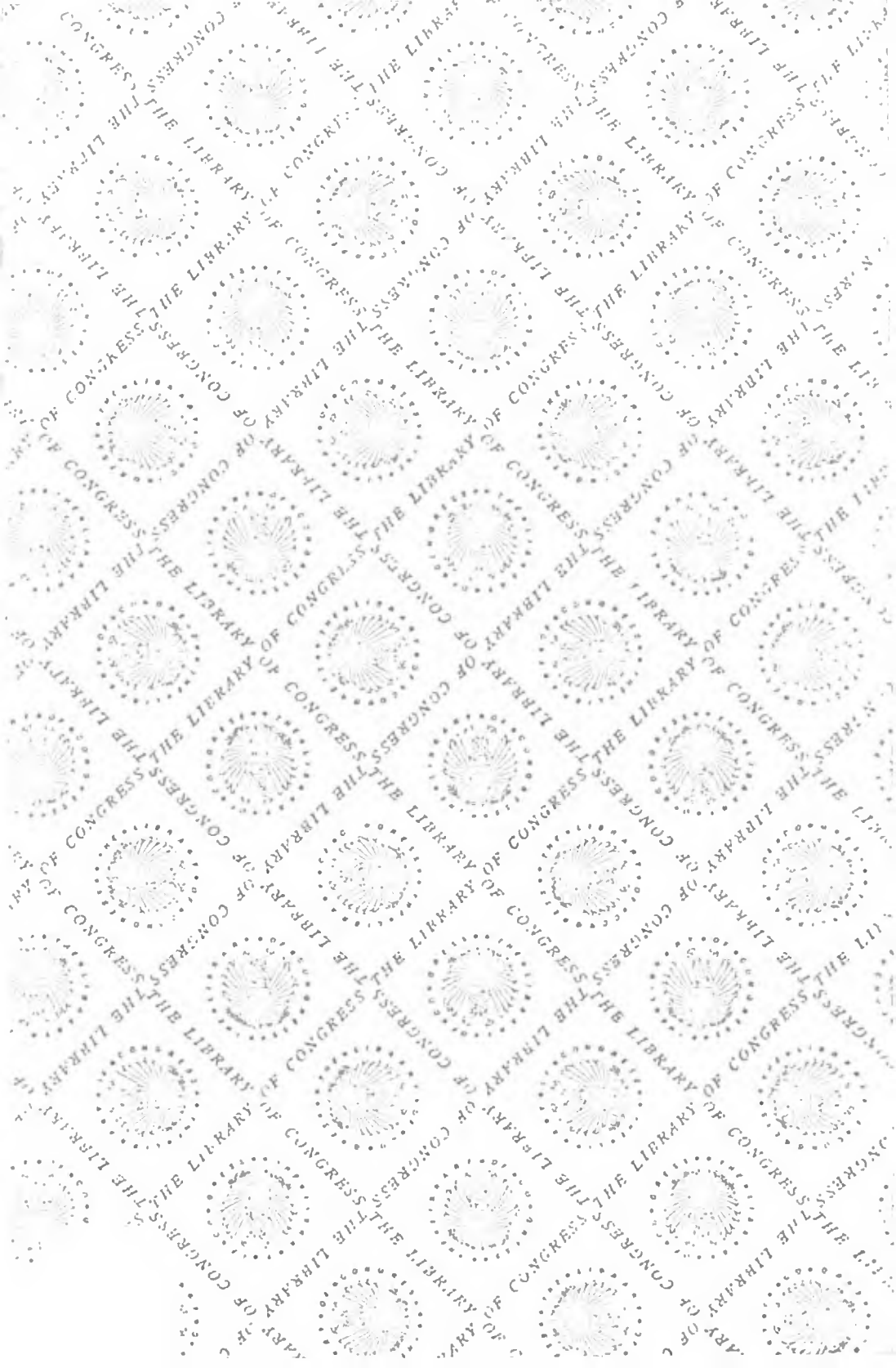
Mr. SKUBITZ. I will not be here. However, Mr. Rooney will be here at that time.

Mr. ROONEY. Thank you very much, Mr. Heffron.

That concludes our hearing.

[Whereupon at 12:20 p.m. the subcommittee adjourned.]







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